IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.MC.No. 471 of 2004()

CC.721/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG

.....

PETITIONER: ACCUSED.

K.SASI, AGED 27 YEARS,
S/O.KUNHIKANNAN, KADAVATH HOUSE,
KANHANGAD, HOSDURG.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: COMPLAINANT.

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI C.M. KAMMAPPU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.APPL.NO.2155/2004 IN CRL.M.C.471/2004

DISMISSED.

12-12-2007. SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

V.K.MOHANAN, J.

Crl.M.C.N0.471 of 2004

Dated, 12th December, 2007.

ORDER

Petitioner herein is the sole accused in C.C.No.721/2001 of the Court of Judicial First Class Magistrate-1, Hosdurg. The above case was instituted upon annexure-A complaint wherein the allegation is that the petitioner herein was a witness in a section 202 of Cr.P.C. enquiry conducted in the Judicial First Class Magistrate-I, Hosdurg before setting up S.C.No. 219/1999 in the court of Assistant Sessions Judge, Hosdurg, Kanhangad and in that enquiry, when he was examined, it is alleged that he has made false statement. On the basis of the said allegation, a complaint was filed by the Subordinate Judge, Hosdurg under section 195 of Cr.P.C. in the court of the Assistant Sessions Judge, Hosdurg. It is the above complaint impugned in this Crl.M.C.

2. The case of the petitioner is that annexure A complaint is not sustainable either on law or on the facts and circumstances of the case as the same is against various

provisions contained in the Cr.P.C. It is averred in the memorandum of Crl.M.C that the Subordinate Judge, Hosdurg has no jurisdiction or authority to lodge a complaint under section 195 of Cr.P.C. for the reason that section 202 enquiry was not conducted before that court. It is further submitted that in view of section 352 of Cr.P.C. no Judge of a criminal court or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding unless as provided in sections 344, 345, 349 and 350 of Cr.P.C. According to the petitioner, in the present case, the so called offence was alleged to have been committed in the court of Judicial Magistrate of the First Class-I, Hosdurg where the 202 enquiry was conducted. But now C.C.No.721/2001 is instituted in the same court based upon annexure-A complaint and the institution of such case itself is diametrically opposed to the provisions contained

in section 352 of Cr.P.C. It is also argued by the counsel for the petitioner that going by annexure-A complaint, there is nothing to infer as to whether the court applied its mind regarding the second condition contained in section 340 so as to come into a conclusion that it is expedient in the interests of justice to make an inquiry into the false evidence alleged to have been given by the petitioner etc. Thus according to the counsel appearing for the petitioner, annexure-A complaint and all proceedings instituted thereon are unsustainable either on facts or on law involved in the case.

3. I have heard the counsel for the petitioner Sri P.Vijayabhanu as well as the learned Public Prosecutor.

4. Section 195(1) reads:

> **"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence**
>
> (1) No court shall take cognizance
>
> (a) (i) of any offence punishable under sections 172 to 188 (both inclusive)

of the Indian Penal code, 1860 (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he has administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal code, 1860 (45 of 1860), namely, sections 193 to 196 (both inclusive),199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause(i) or sub-clause (ii),

except on the complaint in writing of that court, or of some other court to which that court is

subordinate".

(emphasis supplied)

On a reading of the above provision it is crystal clear that the court which can take action under section 195 of Cr.P.C. is the court where the offence alleged to have been committed, namely, the Judicial Magistrate of the First Class-1, Hosdurg. Going by annexure-A complaint it can be seen that the petitioner deposed that he had not witnessed anything being seized by the Excise Officials from the accused in that case as contended by the prosecution. According to the complaint, in cross examination by the A.G.P., it is alleged that the petitioner has deposed in categorical terms, before the Judicial Magistrate of the First Class-1, Hosdurg when he was examined on oath, that he made a false statement that he witnessed the seizure of arrack from the accused. From the above factual averment it can be seen especially in view of section 195(1) of Cr.P.C., the competent presiding officer is the Judicial Magistrate of First Class-1, Hosdurg

to make a complaint for such alleged offence. In this juncture it is also relevant to note that at that time, though 202 inquiry was conducted in the Magistrate court, Hosdurg, subsequently the case was renumbered as S.C.219/99 and tried in the court of Assistant Sessions court, Hosdurg. But annexure-A complaint is seen to have been filed by Sri P.K.Lakshmanan, the presiding officer, Subordinate Judge, Hosdurg, Kanhangad which court has nothing to do with either 202 inquiry or with the trial of S.C.219/99. In the decision reported in **Daniel Sam v.Andrew (1991(1) KLT 23 (S.N.No.30)**, the Madras High Court held:

> "The words "in relation to a proceeding in that court" in S.340 of Cr.P.C., show that the court which can take action under this section can only be the Court before which or in relation to whose proceedings, the offence had been committed. It will not be necessary that the complaint should be made by the same Judge, before whom the offence was committed but it will be sufficient if it was made by the same Court. The

> courts which have jurisdiction to lay a complaint would be the Court before which the offence was committed in or in relation to a proceeding in that Court or by a Court to which such former court was subordinate within the meaning of S.195 (4) Criminal Procedure Code".

In the light of the above decision and the above discussion I am of the view that annexure-A complaint is not legally sustainable and the same is liable to be quashed.

5. The learned counsel appearing for the petitioner invited my attention to section 352 of Cr.P.C. which reads:

> **"352. Certain Judges and Magistrates not to try certain offences when committed before themselves:**
>
> Except as provided in sections 344, 345,349 and 350, no Judge of a criminal court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding".

In the light of the above provision, the Judicial Magistrate

of the First Class-1 Hosdurg has no jurisdiction to try the offence which alleged to have been committed before it. In the present case, cognizance was taken by the said court based upon annexure-A complaint and the matter is pending there for trial which is diametrically opposed to the mandate contained in Section 352 Cr.P.C.. For that reason also, all the proceedings in C.C.721/2001 of the Court of Judicial Magistrate of the First Class-I, Hosdurg is liable to be quashed.

6. Another point advanced during the argument by the learned counsel for the petitioner is that going by annexure-A complaint, it can be seen that there is nothing to infer that the complainant has made up his mind and came into a conclusion that it is expedient in the interests of justice to make inquiry into the false evidence alleged to have been given by the petitioner and a complaint is to be filed. In support of the above contention, the learned counsel very much placed reliance on the decision of the Apex Court in **B.K.Gupta v. Damodar H.Bajaj** (2001) 9

SCC 742). In paragraph 3 of the above decision, the Apex Court has held:

> "From the above, it follows that there are two conditions on fulfilment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an enquiry against such a person in relation to the offence committed by him. It is no doubt true that the High court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and fabricated. On a perusal of the record we do not find any material on record to show that there was any application of mind by the Court that it was expedient in the interest of justice to make an enquiry and file a complaint against the appellant. We have also perused the judgment in Writ Petition No.1442 of 1983 and the judgment does not show that the Court applied its mind regarding the second condition as to whether it is expedient in the interest of justice to make an enquiry into the false evidence given by the appellant and a complaint is to be filed. In the absence of application of mind in regard to expediency for filing complaint against the appellant, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated."

On a perusal of annexure A complaint, there is nothing discernible from the complaint to show that the complainant in annexure-A made up his mind as envisaged by second condition of section 195 of Cr.P.C. Therefore I hold that in the absence of anything to show that the complainant in annexure-A has made up its mind as required in the second condition of section 195 of Cr.P.C. annexure A complaint is liable to be quashed.

7. In the result, annexure A complaint and all proceedings in C.C.No.721/2001 on the file of the Court of Judicial Magistrate of the Ist Class-I, Hosdurg are quashed. Accordingly, the Crl.M.C. is allowed.

V.K.MOHANAN, JUDGE.

kvm/-

V.K.MOHANAN, J.

CRL.M.C. No.471/2004

Order

Dated:12th December,2007